



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

FAIRCLOTH et al.

Serial No.: 10/661,698

Filed: September 12, 2003

For: PLAY PILLOW WITH HIDING SPACE

Group Art Unit: 3673

Examiner: Conley, Fredrick C.

Docket No.: PIL001

37 C.F.R. § 1.131 AFFIDAVIT

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

We, Julia S. FAIRCLOTH and Nellie T. FAIRCLOTH, do hereby declare as follows:

1. We are the first inventors of the subject matter that is claimed and for which a patent is sought in U.S. Patent Application Number 10/661,698, filed Sept. 12, 2003, entitled Play Pillow With Hiding Space.
2. We are residents of Oregon in the United States, and over the age of eighteen years.
3. We declare that **Exhibit A** contains a true and correct copy of the presently pending claims 1-2, 4-36 of U.S. Patent Application Number 10/661,698. We have reviewed and understand the contents of said application, including the claims as amended during the prosecution proceedings.
4. We acknowledges the duty to disclose to the Patent Office all information known to us to be material to patentability as defined in 37 C.F.R. § 1.56.

5. We understand that the United States Patent and Trademark Office has rejected claims 1-2, 4-10, 14-18, 21, 23-32, and 34 based on 35 U.S.C § 103 obvious type rejections where U.S Patent 6,941,601 B2 to DeBartolo et al. is used as the base reference in combination with other references in each rejection. We understand that U.S. Patent 6,941,601 B2 to DeBartolo et al. has an effective U.S. filing date of Feb. 6, 2003.

6. We swear that Julia S. Faircloth is the inventor of the subject matter of rejected claims 1-2, 4-10, 14-18, 21, 23-32, and 34.

7. We swear that Julia S. Faircloth is the original inventor of the embodiment shown in attached Exhibits B thru D, and that Julie S. Faircloth reduced this embodiment of our invention to practice prior to the filing date of U.S. Patent 6,941,601 B2 to DeBartolo et al.

8. **Exhibit B:** Is a color photocopy of three pages from the 36 page "Holiday Gift Guide 2002", and including one black and white enlargement of the pertinent advertisement. The "Holiday Gift Guide 2002" was a supplement to four Evergreen Newspapers, Inc. newspapers listed at the bottom of the first page. Specifically, included in Exhibit B is front page, and pages 15 and 27 of "Holiday Gift Guide 2002". Page 27 has an "Interior Elements" advertisement showing the present inventive pillow. The structure of the pillow in the advertisement is as illustrated in the present Figures 1A-1G, and claimed in corresponding claims, absent optional transparent pouch 117, optional sound device 119 and identification label 138. Included in Exhibit B is an enlargement of the advertisement. The advertisement shows a Peek-A-Boo Pillow® with Cowboy theme having a cowboy print fabric and stuffed animal inside. The left pillow image in the advertisement is of the pillow with door in closed position, and the adjacent image is of the pillow with the door in the open position showing the pillow cavity opening with a stuffed animal in the cavity. The "Holiday Gift Guide 2002" includes an advertisement by the "Daniel Diamonds, Inc." on page 15. The advertisement states "Holiday Sale Nov. 21st - Dec. 31st", which in combination with the "2002" from the first page establishes the publication date at least prior to Dec. 31, 2002.

9. **Exhibit C:** Is a photocopy of Invoice 7253 received from "Interior Elements" for five Peek-A-Boo Pillows®. The date of the invoice is November 5, 2002. "Style 120 Peek-A-

Boo" has the structure of the present Figures 1A-1G, absent optional transparent pouch 117, optional sound device 119 and identification label 138.

10. **Exhibit D:** Is a black and white photocopy of a newspaper page from the Bozeman Daily Chronicle. The image was reduced in size for photocopying. The newspaper page, dated December 14, 2002, is a full page advertisement for the "The Artshoppe Framing & Gallery" showing the present Peek-A-Boo Pillow®, see left column, third image down. Included in Exhibit E is an enlargement of the pillow portion of the advertisement. The pillow shown in the advertisement has a pillow structure as illustrated in the present Figures 1A-1G, and claimed in corresponding claims, absent optional transparent pouch 117, optional sound device 119 and identification label 138. The advertisement shows a Peek-A-Boo Pillow® with cowboy theme having a cowboy print fabric and a stuffed toy horse inside. The left image in the advertisement is of the pillow with door in closed position, the adjacent image is of the pillow with the door in the open position showing the pillow cavity opening with a stuffed toy horse in the cavity. The newspaper advertisement was published in the Bozeman Daily Chronicle, dated Saturday, December 14, 2002. The date appears in the upper right hand corner.

11. We swear that the pillows shown Exhibits B and D and similar pillows existed and were on display at the respective stores posting the advertisements, such that, our inventive pillow as illustrated in Figures 1A-1G and claimed in corresponding claims, absent optional transparent pouch 117, optional sound device 119 and identification label 138, was actually reduced to practice prior to Feb. 6, 2003.

12. **DECLARATION:** We declare that all information stated herein based upon our own knowledge is true and that all information stated herein based on information and belief is believed to be true, and further that the statements made in this Declaration were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing based on this application.

Respectfully submitted,

• Julia S. Faircloth

Signature: *J Faircloth*

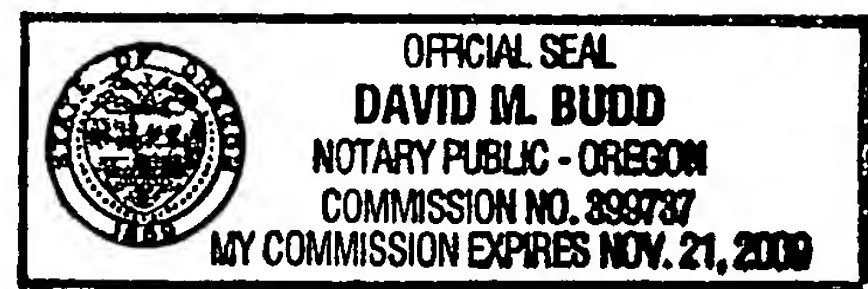
Nellie T. Faircloth

Signature: *N. T. Faircloth*

Date: *March 8, 2006*

Julia S. Faircloth
Nellie T. Faircloth
11025 NE Hurley Lane
Newberg, OR 97132
ph. (503) 538-1258

NOTARY SEAL:



Notary Signature: *David M. Budd*
Printed Name: David M. Budd
Residing At (city, state, county): NEWBERG, OR, Yamhill
My Commission Expires: Nov. 21 2009

Claims Appendix

1. (previously presented) A theme pillow assembly for playing peek-a-boo hide and seek with at least one item, comprising:

a cushioning member, said cushioning member including a cushioning medium, a front surface and a back surface, said front surface and said back surface being connected along an outer perimeter of said cushioning member, said cushioning medium being between said front surface and said back surface;

a first cavity, said first cavity recessed from said front surface into said cushioning member, said first cavity having a first cavity opening of a predetermined dimension, a first cavity sidewall perimeter surface, and a first cavity floor surface of a similar predetermined dimension, said first cavity sidewall perimeter surface connected to said first cavity floor surface, and said first cavity sidewall perimeter surface encircled by said cushioning medium;

at least one item removeably situated in said first cavity;

a first door connected to said front surface, and said first door being bendable and openable to an open position for revealing at least a portion of said first cavity and closeable to a closed position over said first cavity for concealing said at least a portion of said first cavity and said at least one item situated in said first cavity; and,

wherein said first cavity sidewall perimeter surface billows inward toward said first cavity to snugly hold said at least one item;

wherein said first cavity opening generally maintains said predetermined dimension in said open position and in said closed position, and said first cavity floor surface generally maintains said similar predetermined dimension in said open position and in said closed position;

wherein said first cavity sidewall perimeter surface billows in between said first cavity opening and said first cavity floor surface, said first cavity sidewall perimeter surface at least partially obscuring said first cavity floor surface when said at least one item is removeable situated in said first cavity and when said first cavity is empty; and,

wherein at least one of said cushioning member and said first door have indicia, said at least one item and said indicia together visually indicating an illustrated theme.

2. (previously presented) The theme pillow assembly of claim 1, wherein said at least one item includes a stuffed animal.

3. (canceled)

4. (original) The theme pillow assembly of claim 1, further comprising a sound device, and where said sound device emits a sound that further indicates said illustrated theme.

5. (original) The theme pillow assembly of claim 1, wherein said first cavity opening has a circumference and where said first door has a larger circumference than said first cavity opening circumference so as to overlay a portion of said front surface.

6. (original) The theme pillow assembly of claim 1, wherein said outer perimeter of said cushioning member has a generally rectangular outline, said outline encircling a cushioning member frontal area, said first cavity opening encircling an opening area, and where said opening area is at least 18% of the size of said cushioning member frontal area.
7. (original) The theme pillow assembly of claim 1, wherein said cushioning member includes a shell, said shell housing said cushioning medium, and said shell comprising quilted fabric material.
8. (original) The theme pillow assembly of claim 1, wherein said first cavity floor surface is attached proximate to said back surface for preventing said first cavity sidewall perimeter surface and said first cavity floor surface from turning inside out.
9. (previously presented) The theme pillow assembly of claim 1, further including a securing means for securing said first door in said closed position, and wherein said first door is connected to said front surface, said first door opening by bending and said first door generally conforming to said front surface in said closed position, said front surface being convexly contoured.
10. (original) The theme pillow assembly of claim 1, further comprising a second door connected to said cushioning member.

11. (original) The theme pillow assembly of claim 10, wherein said first door and said second door conceal said first cavity when said first door and second door are in closed positions.

12. (original) The theme pillow assembly of claim 10, further comprising a third door, said third door underlying said first door when said first door is in said closed position.

13. (original) The theme pillow assembly of claim 1, further comprising an attached structure bridging at least a portion of said first cavity.

14. (original) The theme pillow assembly of claim 1, wherein said outer perimeter of said cushioning member has an outline that is shaped to further visually indicate said illustrated theme.

15. (previously presented) The theme pillow assembly of claim 1, wherein said cushioning member includes an outer perimeter surface, said outer perimeter surface connected to an outer perimeter of said front surface and connected to said back surface, said outer perimeter surface providing depth to said cushioning member.

16. (original) The theme pillow assembly of claim 15, further comprising a second cavity, said second cavity having a second cavity perimeter sidewall surface which generally encircles a three dimensional void of said second cavity, said second cavity generally encircled by said cushioning medium.

17. (original) The theme pillow assembly of claim 16, wherein said second cavity is in said outer perimeter surface and extending in an inward direction between said front surface and said back surface.

18. (original) The theme pillow assembly of claim 16, further comprising a second door, said second door having a closed position for concealing said second cavity and an open position for revealing said second cavity.

19. (original) The theme pillow assembly of claim 1, further comprising a tunnel, said tunnel having a tunnel opening in said first cavity sidewall perimeter surface, and said tunnel being a passageway located in between said front surface and said back surface.

20. (original) The theme pillow assembly of claim 1, further comprising a cover door and an opening in said first door, said cover door covering said opening in said first door in a closed position and exposing said opening in said first door in an open position, said cover door pivotally connected to said first door.

21. (original) A theme pillow kit comprising the theme pillow assembly of claim 1, a blanket, and a container, said container sized to hold said theme pillow assembly and said blanket, at least one of said blanket and said container having indicia which together with said cushioning member and said item visually indicates said illustrated theme.

22. (original) The theme pillow kit of claim 21, wherein said container is a carrying bag and includes a transparent portion and trim portion, said trim portion having indicia that coordinates with said indicia on said at least one of said cushioning member and said first door.

23. (previously presented) A cushion article for removeably receiving an item, comprising:

- a first surface having an outer perimeter;

- a second surface connected to said first surface at said outer perimeter;

- a cushioning medium, said cushioning medium located between said first surface and said second surface;

- a first cavity, said first cavity being a three dimensional void encircled by said cushioning medium and being generally encircled by said first surface, said first surface including a front surface, a first cavity sidewall perimeter surface and a first cavity floor surface, said first cavity sidewall perimeter surface and said first cavity floor surface generally defining said three dimensional void, said first cavity sidewall perimeter surface billowing toward said three dimensional void, at least when said void is empty, for snugly holding yet removeably receiving the item, a first cavity opening to said first cavity being encircled by said front surface; and,

- a first door, said first door connected to said first surface at a location in between said outer perimeter of said cushioning member and said first cavity opening and openable to an open position and closeable to a closed position, said first door overlaying said first cavity in said

closed position, and said first door having a circumference greater than a circumference of said first cavity opening yet smaller than a circumference of said outer perimeter.

24. (original) The cushion article of claim 23, in combination with a removeable item, and where at least a portion of said first surface and said first door have indicia which together with said item visually illustrate a theme.

25. (previously presented) A theme pillow assembly for concealing and revealing an item comprising:

- a first layer of material;

- a second layer of material connected to said first layer of material;

- cushioning medium between said first layer and said second layer;

- a cavity having an opening, said first layer of material including a front layer, a cavity sidewall perimeter layer and a cavity floor layer, said cavity sidewall perimeter layer being encircled by said cushioning medium, said cavity opening and said cavity floor layer similarly sized and similarly shaped, said cavity opening and said cavity floor layer generally maintaining said size and shape;

- an item removeably stationed in said cavity;

- a third layer of material attached to said first layer of material, said third layer of material being a door covering at least a portion of said cavity opening, said third layer of material attached to pivotally open to an open position and pivotally close to a closed position,

said third layer attached in between said opening of said cavity and an outer perimeter of said first layer of material; and,

wherein at least one of said first layer of material and said third layer of material bear indicia which together with said item indicate a theme.

26. (previously presented) The theme pillow assembly of claim 25, wherein said item includes a stuffed toy.

27. (previously presented) The theme pillow assembly of claim 25, further comprising a sound device.

28. (previously presented) The theme pillow assembly of claim 25, wherein said cavity opening has a circumference and where said third layer has a larger circumference than said cavity opening circumference so as to overlay a portion of said first layer of material.

29. (previously presented) The theme pillow assembly of claim 25, wherein said cavity floor layer is attached to said second layer for preventing said cavity sidewall perimeter layer and said cavity floor layer from turning inside out.

30. (previously presented) The theme pillow assembly of claim 25, wherein an outer perimeter of said theme pillow assembly has an outline that is shaped to further indicate said theme.

31. (previously presented) The theme pillow assembly of claim 25, further comprising a outer perimeter layer of material, said outer perimeter layer of material connected to an outer perimeter of said first layer of material and an outer perimeter of said second layer of material, said outer perimeter layer of material providing depth to said theme pillow assembly.

32. (previously presented) The theme pillow assembly of claim 31, further comprising a second cavity, said second cavity having a second cavity sidewall perimeter surface which generally encircles a three dimensional void of said second cavity, said second cavity generally encircled by said cushioning medium.

33. (previously presented) The theme pillow assembly of claim 25, further comprising a tunnel, said tunnel having a tunnel opening in said cavity sidewall perimeter layer, and said tunnel being a passageway located in between said first layer and said second layer.

34. (previously presented) A theme pillow assembly for playing peek-a-boo hide and seek with at least one item, comprising:

a cushioning member, said cushioning member including a cushioning medium, a front surface and a back surface, said front surface and said back surface being connected along an outer perimeter of said cushioning member, said cushioning medium being between said front surface and said back surface;

a first cavity, said first cavity recessed from said front surface into said cushioning member, said first cavity having a first cavity opening, a first cavity sidewall perimeter surface

and a first cavity floor surface, said first cavity sidewall perimeter surface connected to said first cavity floor surface, and said first cavity sidewall perimeter surface encircled by said cushioning medium;

at least one item removeably situated in said first cavity;

a first door connected to said front surface, and said first door openable to an open position for revealing at least a portion of said first cavity and closeable to a closed position over said first cavity for concealing said at least a portion of said first cavity and said at least one item situated in said first cavity;

wherein said cushioning member includes a shell, said shell housing said cushioning medium, and said shell comprising layers of fabric material, said first cavity floor surface on an exterior side of a first cavity floor layer of fabric material, said back surface on an exterior side of a back layer of fabric material, said first cavity floor layer having an interior side and said back layer having an interior side, said first cavity floor layer interior side and said back layer interior side connected without said cushioning medium intervening; and,

wherein at least one of said cushioning member and said first door have indicia, said at least one item and said indicia together visually indicating an illustrated theme.

35. (previously presented) A theme pillow assembly for playing peek-a-boo hide and seek with at least one item, comprising:

a cushioning member, said cushioning member including a cushioning medium, a front surface and a back surface, said front surface and said back surface being connected along

an outer perimeter of said cushioning member, said cushioning medium being between said front surface and said back surface;

a first cavity, said first cavity recessed from said front surface into said cushioning member, said first cavity having a first cavity opening, a first cavity sidewall perimeter surface and a first cavity floor surface, said first cavity sidewall perimeter surface connected to said first cavity floor surface, and said first cavity sidewall perimeter surface encircled by said cushioning medium;

at least one item removeably situated in said first cavity;

a first door connected to said front surface, and said first door openable to an open position for revealing at least a portion of said first cavity and closeable to a closed position over said first cavity for concealing said at least a portion of said first cavity and said at least one item situated in said first cavity;

further comprising an attached structure bridging at least a portion of said first cavity; and,

wherein at least one of said cushioning member and said first door have indicia, said at least one item and said indicia together visually indicating an illustrated theme.

36. (previously presented) A theme pillow assembly for playing peek-a-boo hide and seek with at least one item, comprising:

a cushioning member, said cushioning member including a cushioning medium, a front surface and a back surface, said front surface and said back surface being connected along

an outer perimeter of said cushioning member, said cushioning medium being between said front surface and said back surface;

a first cavity, said first cavity recessed from said front surface into said cushioning member, said first cavity having a first cavity opening, a first cavity sidewall perimeter surface and a first cavity floor surface, said first cavity sidewall perimeter surface connected to said first cavity floor surface, and said first cavity sidewall perimeter surface encircled by said cushioning medium;

at least one item removeably situated in said first cavity;

a first door connected to said front surface, and said first door openable to an open position for revealing at least a portion of said first cavity and closeable to a closed position over said first cavity for concealing said at least a portion of said first cavity and said at least one item situated in said first cavity;

a cover door and an opening in said first door, said cover door covering said opening in said first door in a closed position and exposing said opening in said first door in an open position, said cover door pivotally connected to said first door; and,

wherein at least one of said cushioning member and said first door have indicia, said at least one item and said indicia together visually indicating an illustrated theme.

EXHIBIT C

Serial No: 10/661,698
Inv.: Faircloth et al.

7253

ORDER NO.	DEPT.	DATE: 11-05-02
TO: Debbie Interior Elements		
ADDRESS: 25795 Conifer Rd B211		
CITY, STATE, ZIP: Conifer, CO. 80433		

SOLD BY: 11/05/02	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RTD.	PAID OUT
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QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	Style 120 Peeka-boo Lil Cowgirl, Red trim Horse Rocker		
1	Style 120 Peeka-boo Lil Cowpoke, blue trim Dog Bandit		
1	Style 120 Peek-A-B Lil Cowpoke maroon trim Horse Rocker		
1	Style 110 Pink Cowboy with black fringe		
1	Style 101 Animal Silhouettes Rust colors		

RECEIVED BY:

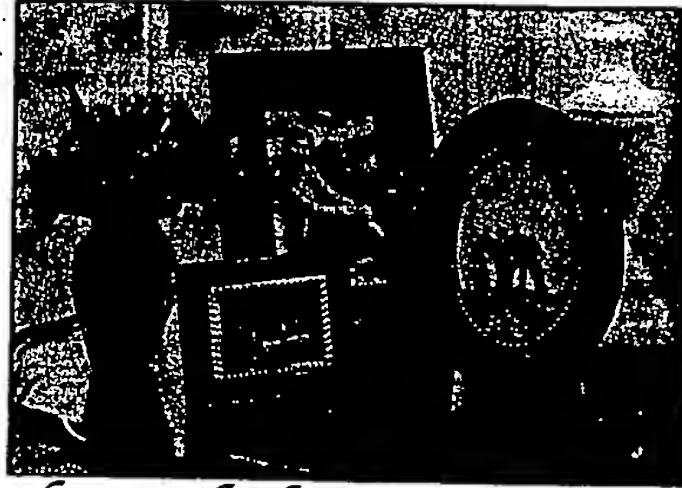
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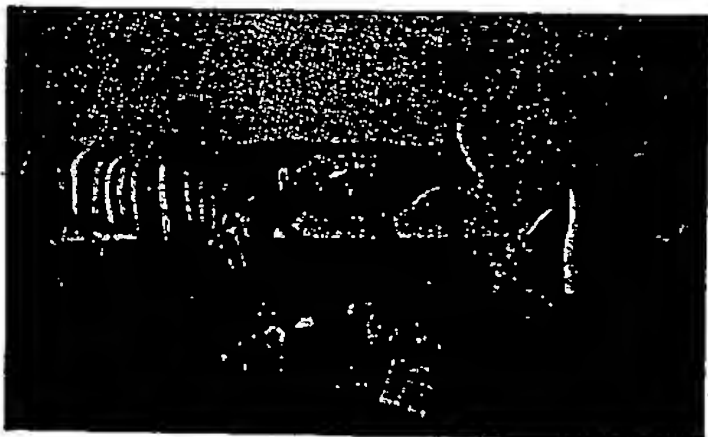
The Artshoppe

Framing & Gallery

♦ Holiday Gifts for Everyone ♦



A Photo Frame is the perfect gift for anyone!

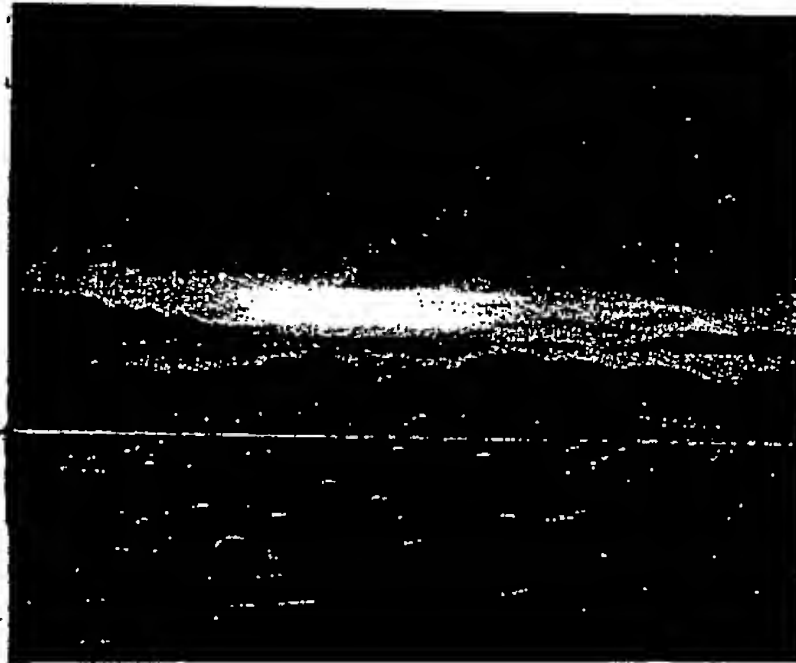


*Colorful Cow Sculptures
Starting at \$7.00*

*Peek-A-Boo-Pillows
Starting at \$39.00*



Open the flap to see what hides inside



*"Red bales in the morning:
Original oil painting by Judy Nansel
Oil Paintings starting at \$250.00*



*"A Pony Christmas"
Original oil painting by Judy Nansel
(Prints Available)*

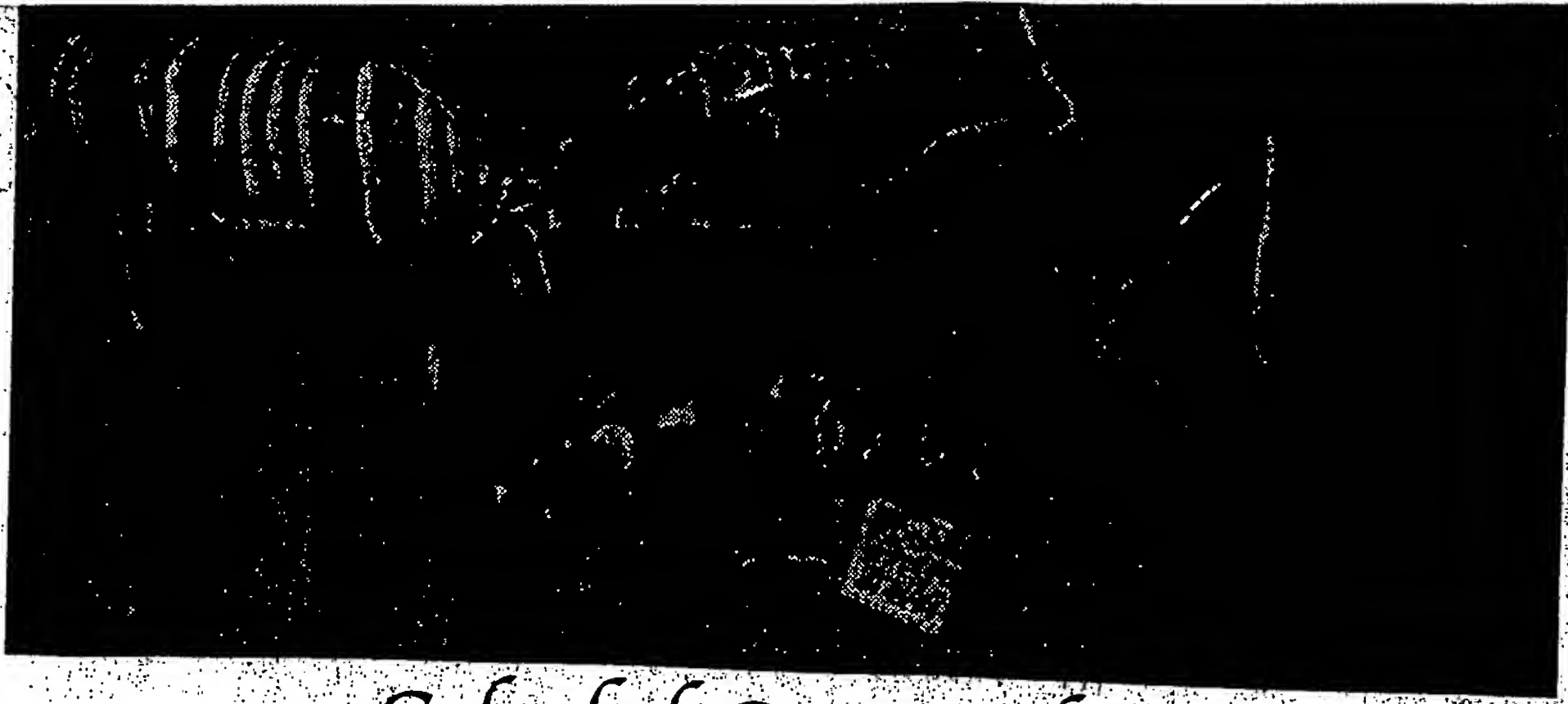
*Montana landscapes, vivid abstract lithographs,
large scale photographs, stone & metal sculptures,
custom framing & quality gifts.*

*We Ship Anywhere!
Free Gift Wrapping*



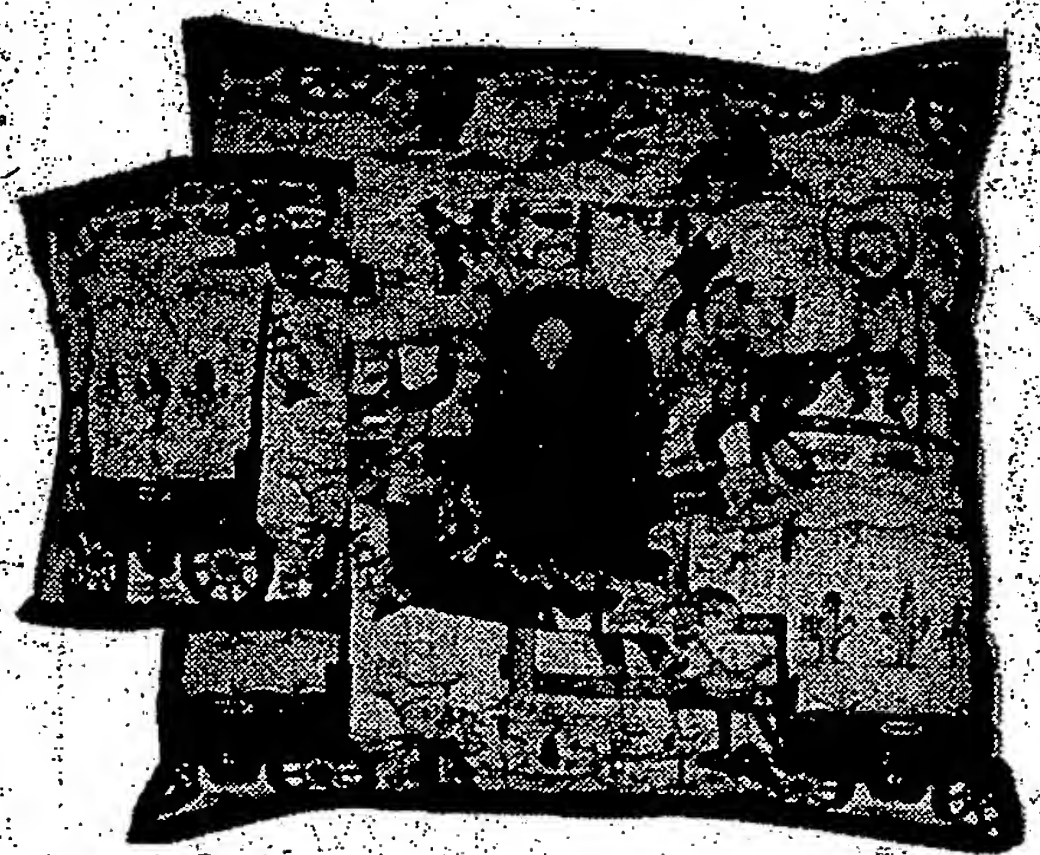
*23 S. Willson ♦ Downtown Bozeman ♦ 586-8696
convenient parking in the rear of the store*

EXHIBIT D



Colorful Cow Sculptures
Starting at \$7.00

Peek-A-Boo-Pillows
Starting at \$39.00



Open the flap to see what hides inside



Or

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